

In re) Fair Hearing No. 15,443
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Appeal of)

The petitioners appeal the decision by the Department of Aging and Disabilities (DAD) refusing to approve them as providers of Home and Community Based Waiver (HCBW) services. The preliminary issue is whether the petitioners have legal standing to appeal to the Human Services Board. In lieu of an oral hearing the parties have provided written arguments, copies of which are attached hereto.

The petitioners are a for-profit corporation that provides home-based nursing services in Vermont. They are neither licensees of DAD nor applicants for a license.¹

¹The petitioners are certified by the Department of Banking, Insurance, Securities, and Health Care

petitioners have appealed that decision to the HSB. DAD has moved to dismiss, alleging that the petitioners lack standing under 3 V.S.A. § 3091(a) to bring an appeal to the Board.

3 V.S.A. § 3091(a) provides as follows:

An applicant for or a recipient of assistance, benefits or social services from . . . the department of aging and disabilities . . . or an applicant for a license from one of those departments or offices, or a licensee, may file a request for a fair hearing with the human services board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits or services is denied, or not acted upon with reasonable promptness; or because the individual is aggrieved by any other agency action affecting his or her receipt of assistance, benefits, or services, or license or license application; or because the individual is aggrieved by agency policy as it affects his or her situation.

As noted above, the petitioners are neither licensees nor applicants for a license from DAD. They are providers of a service for which DAD makes payments on behalf of eligible individuals, much the same as the Department of Social Welfare (DSW) makes payments to doctors, hospitals, and pharmacies that provide medical services to recipients of Medicaid. The petitioners are not the "recipients" of those benefits.² As such, they have no more standing to pursue an appeal before the Board as would a medical provider that DSW disqualified from receiving reimbursement under Medicaid. See Fair Hearing No. 2822.

Administration.

²33 V.S.A. § 6302(a) provides that HCBW services are "to

The petitioners are of course free to pursue a judicial remedy.³ However, it must be concluded that they do not meet the requirements of 3 V.S.A. § 3091(a) to have standing to take their appeal to the Human Services Board.

ORDER

The petitioners' appeal is dismissed.

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assist persons to avoid institutional care".

³It should be noted, however, that regardless of the forum in which the petitioners may have standing, and notwithstanding the public policy bases of their claims, their likelihood for success on the legal merits is bleak. As discussed above, the statutory definition of "home health agency" is "nonprofit". See 33 V.S.A. § 6301(2). Far from abusing its "discretion" in not certifying the petitioners to receive HCBW payments, it appears that the agency would be violating the statute by doing so. It would, thus, appear that the petitioners' only remedy is legislative.